



ARIZONA STATE SENATE
Fifty-Fifth Legislature, Second Regular Session

FACT SHEET FOR H.C.R. 2001

racial discrimination; public education

Purpose

Subject to voter approval, constitutionally prohibits an employee or governing member of a public educational institution from promoting, endorsing or compelling adoption of or adherence to ideas contrary to specified anti-discrimination provisions in federal law and the Arizona Constitution, including specific concepts relating to race and ethnicity. Defines *political test* relating to public education and limits actions taken in accordance with eligibility requirements for federal monies that are exempt from preferential treatment or discrimination prohibitions. Directs the Legislature to prescribe penalties for violations of outlined prohibitions.

Background

The Fourteenth Amendment to the U.S. Constitution deems all persons who are born or naturalized in the United States and subject to U.S. jurisdiction to be citizens of the United States and their state of residence. A state may not: 1) make or enforce a law abridging the privileges or immunities of a U.S. citizen; 2) deprive a person of life, liberty or property without due process of law; or 3) deny a person within its jurisdiction the equal protection of law. The Fourteenth Amendment also includes a requirement to reduce a state's apportionment of representatives for denying certain persons the right to vote and a prohibition against certain officials who have engaged in insurrection or rebellion holding office. Congress has the power to enforce the provisions by appropriate legislation ([U.S. Const. amend. XIV](#)). Title VI of the federal Civil Rights Act of 1964 prohibits a person from being excluded from participation in, denied the benefits of or subjected to discrimination under any program or activity receiving federal financial assistance based on race, color or national origin ([P.L. 88-352, 88th Congress, 1964](#)).

The Arizona Constitution authorizes the State of Arizona to exercise its sovereign authority by passing an initiative, referendum or bill or pursuing any other legal action to restrict the actions of its personnel and use of its financial resources to purposes consistent with the U.S. Constitution. On exercise of this authority, the state and all political subdivisions may not use personnel or financial resources to enforce, administer or cooperate with the designated federal action or program ([Ariz. Const. art. 2 § 3](#)). The State of Arizona may not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting. The prohibition does not apply to actions necessary for eligibility in a federal program, if ineligibility would result in a loss of federal monies to the state ([Ariz. Const. art. 2 § 36](#)). The Arizona Constitution also prohibits imparting sectarian instruction in a public school or state educational institution and conditioning admission into a public educational institution as a teacher, student or pupil on a religious or political test or qualification. The prohibition may not be construed to justify practices or conduct inconsistent with the good order, peace, morality or safety of the state, or with the rights of others ([Ariz. Const. art. 11 § 7](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Prohibition on Endorsement of Certain Ideas in Public Education

1. Prohibits an employee or governing board or governing body member of a public elementary or secondary education institution, public university or community college from:
 - a) compelling or requiring an employee or student to adopt, affirm, endorse, adhere to or profess an idea contrary to Title VI of the federal Civil Rights Act of 1964 and the prohibition on preferential treatment or discrimination in public employment, education or contracting as outlined in the Arizona Constitution; or
 - b) compelling an employee or student to participate in a training or orientation promoting such ideas.
2. Includes, in the ideas subject to the prohibitions, that:
 - a) one race or ethnic group is inherently morally or intellectually superior to another race or ethnic group;
 - b) an individual, by virtue of their race or ethnicity, is inherently racist or oppressive, whether consciously or unconsciously;
 - c) an individual should be invidiously discriminated against, or receive adverse treatment solely or partly because of, their race or ethnicity;
 - d) an individual's moral character is determined by their race or ethnicity;
 - e) an individual, by virtue of their race or ethnicity, is subject to blame or judgment or bears responsibility for actions committed by other members of the same race or ethnic group;
 - f) an individual should feel discomfort, guilt, anguish or any other form of psychological distress because of their race or ethnicity; and
 - g) academic achievement, meritocracy or traits, such as a hard work ethic, rational thinking, objectivity or literacy are features of racism or oppression.
3. Prohibits the following individuals who are acting in the course of their official duties from using their position of authority over students or other employees to promote or endorse the prohibited tenets:
 - a) an employee of a public elementary or secondary education institution; and
 - b) an employee of a public university or community college, unless included as part of a for-credit postsecondary course taught by a university or community college faculty member.
4. Includes, in the prohibition on promoting or endorsing the prohibited outlined tenets, using public resources or facilities to endorse the tenets.
5. Specifies that the prohibition on an employee of a public elementary or secondary education institution does not prevent a teacher from identifying and discussing historical movements, ideologies or instances of racial hatred or discrimination, including slavery, Indian removal, the Holocaust or Japanese-American internment.
6. Directs the Legislature to prescribe a penalty for a wilful violation of the prohibition relating to the promotion, endorsement or compelled adoption of or adherence to the outlined ideas.
7. Allows an attorney acting on behalf of a public elementary or secondary education institution, public university or community college to request an Attorney General or county attorney legal opinion on whether a proposed use of state resources would violate the prohibition.

Prohibition on Sectarian Instruction and Religious or Political Tests

8. Prohibits a religious or political test or qualification from being required as a condition of promotion within any public educational institution as a teacher, employee, student or pupil.
9. Adds admission as an employee to the types of admission to a public educational institution that may not be conditioned on a religious or political test or qualification.
10. Directs the Legislature to prescribe a penalty for a wilful violation of the prohibitions on imparting sectarian instruction or requiring a political test or qualification as a condition of admission into or promotion within a public educational institution.
11. Defines *political test* to include:
 - a) compelling or soliciting an applicant, teacher, employee, student or pupil to identify a commitment to or to make a statement of personal belief in support of any ideology or movement that promotes the differential treatment of an individual or group of individuals based on race or ethnicity, including any initiative or formulation of diversity, equity and inclusion beyond upholding the equal protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution or any theory or practice that holds that systems or institutions upholding the equal protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution are racist, oppressive or otherwise unjust; and
 - b) giving preferable consideration to an applicant, teacher, employee, student or pupil for opinions expressed or actions taken in support of another individual or group of individuals, in which the institution's consideration is based on the race or ethnicity of those other individuals.
12. Excludes from the definition of *political test*, fidelity to, or an oath or effort taken to uphold, the Arizona Constitution or the U.S. Constitution.

Prohibition on Preferential Treatment or Discrimination in Public Employment, Education or Contracting

13. Subjects the exemption for actions necessary for eligibility for federal monies from the prohibition on granting preferential treatment or discriminating in public employment, education or contracting to:
 - a) a limitation on any action otherwise prohibited, including an affirmative action policy, taken in accordance with federal program requirements to outreach, advertising or communication efforts;
 - b) a prohibition on disadvantaging or treating differently, under any circumstance, any individual from among any pool of applicants, students, employees or contract recipients on the basis of race or ethnicity when making a hiring, contracting, promotion or admission decision;
 - c) a prohibition on a public educational institution implementing any disciplinary policy or disciplinary action that treats an individual student or group of students differently on account of race or ethnicity; and
 - d) a prohibition on conditioning access to services, facilities or grounds of any public educational institution in Arizona on an individual's or group of individuals' race or ethnicity.

14. Declares that the State of Arizona deems any requirement that the state practice racial discrimination, except in accordance with the exemption for outreach, advertising or communication efforts necessary for federal program eligibility, to be:
 - a) inconsistent with the Fourteenth Amendment of the U.S. Constitution; and
 - b) subject to the prohibition on the state and its political subdivisions using personnel or financial resources to enforce, administer or cooperate with the designated federal action or program.
15. Directs the Legislature to prescribe a penalty for a wilful violation of the prohibition on the State of Arizona granting preferential treatment or discriminating in public employment, education or contracting.
16. Specifies that any amendment to the prohibition on granting preferential treatment or discriminating in public employment, education or contracting applies only to actions taken after the effective date of the respective amendment.

Miscellaneous

17. Defines *public educational institution* to include, for the purposes of the prohibitions on preferential treatment or discrimination, sectarian instruction and promoting, endorsing or compelling adherence to outlined ideas:
 - a) a school district, a school operated by a school district and a charter school;
 - b) the Arizona Department of Education and the State Board of Education;
 - c) the Arizona State Schools for the Deaf and the Blind;
 - d) the State Board for Charter Schools; and
 - e) an Arizona public university, a community college district that is a political subdivision of the state and a community college.
18. Defines *community college*, *public university* and *public institution of elementary or secondary education*.
19. Designates this legislation as the *Stop Critical Race Theory and Racial Discrimination in Schools and Other Public Institutions Act*.
20. Contains a purpose statement.
21. Contains a severability clause.
22. Makes technical and conforming changes.
23. Requires the Secretary of State to submit the proposition to the voters at the next general election.
24. Becomes effective if approved by the voters and on proclamation of the Governor.

House Action

GE	2/2/22	DP	7-6-0-0
3 rd Read	2/17/22		31-28-1

Prepared by Senate Research

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LB/slp